

Notice of Allowability

Application No.

09/818,466

Applicant(s)

LEE ET AL.

Examiner

Humera N. Sheikh

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 20 February 2007.
2. ☒ The allowed claim(s) is/are 201-214.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material


5. ☐ Notice of Informal Patent Application

6. ☒ Interview Summary (PTO-413),
Paper No./Mail Date 2/14/07; 2/5/07

7. ☒ Examiner's Amendment/Comment

8. ☒ Examiner's Statement of Reasons for Allowance

9. ☐ Other _____


HUMERA N. SHEIKH
PRIMARY EXAMINER
7C-1600

DETAILED ACTION

Status of the Application

Receipt of the Amendment after Final Office Action and Applicant's Arguments/Remarks, both filed 02/20/07 is acknowledged.

The Amendment after Final filed 2/20/07 has been entered since the amendment places the application in condition for allowance.

Claims 201-214 are pending in this action. Claims 1-200 have been cancelled. New claims 201-214 have been added. Claims 201-214 are allowed.

EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Robert Alderson on 03/05/07.

The application has been amended as follows:

In the Claims:

In Claim 201, line 1, the term --**comprising**-- has been inserted between the words "compositions" and "admixing".

Allowable Subject Matter

Claims 201-214 are allowed.

The following is an examiner's statement of reasons for allowance:

The primary reasons for allowance are that the prior art (Lee *et al.* –WO 99/37287; LaTorre *et al.* –USPN 6,517,863 & Vatter *et al.* –USPN 6,224,888) does not disclose nor fairly teach or suggest the instantly claimed method for preserving cosmetic compositions comprising admixing bioactive glass and a substantially anhydrous cosmetic formulation. None of the cited references teach the instant method of preserving cosmetic compositions.

In stark contrast, the primary Lee '287 reference is directed to using bioactive glass to treat inflammation of skin conditions. The bioactive glass taught by Lee must be mixed with a carrier immediately prior to use; otherwise the ability of the composition to mitigate inflammation may be compromised. Thus, Lee teaches away from the instant invention by emphasizing that the bioactive glass and carrier must be mixed just before application to the skin. Lee is directed to methods for treating skin inflammation, whereas the instant invention is drawn to methods for preserving cosmetic compositions. The secondary references do not cure the deficiencies of the primary Lee reference. LaTorre '863 is directed to compositions and methods for treating nails and adjacent tissues, rather than methods for preserving cosmetic compositions. As with the Lee reference, LaTorre requires that the bioactive glass be used immediately after mixing with water or a topical carrier. The Vatter reference does not make any reference to bioactive glass, nor methods for preserving cosmetic compositions. Thus, the references, taken

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alone, or in combination, fail to teach the instantly claimed methods for preserving cosmetic compositions and fail to establish a *prima facie* case of obviousness.

In a telephonic interview held between Applicant's representative and myself on 2/14/07, Applicant's representative indicated that the claims may be amended to be directed to methods of preserving cosmetic compositions, in order to better place the application in condition for allowance. Examiner agreed to review Applicant's submission carefully to determine allowable subject matter. Applicant's response and amendment places the application in condition for allowance, and thus has been entered and made of record.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Correspondence

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Humera N. Sheikh whose telephone number is (571) 272-0604. The examiner can normally be reached on Monday through Friday during regular business hours.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Woodward, can be reached on (571) 272-8373. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have any questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Humera N. Sheikh

Primary Examiner

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March 05, 2007


HUMERA N SHEIKH
PRIMARY EXAMINER
TC-1600

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